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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,856	01/12/2004	Maurice Gell	UCT-0040	8424
23413	7590	07/25/2007		
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			EXAMINER SAVAGE, JASON L	
			ART UNIT 1775	PAPER NUMBER
			MAIL DATE 07/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/755,856

Applicant(s)

GELL ET AL.

Examiner

Jason L. Savage

Art Unit

1775

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 24-25, 41-42.
Claim(s) rejected: 16-23, 26-31, 33-40, 43-52, 59 and 60.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER

7/23/7

Continuation of 11. does NOT place the application in condition for allowance because: While a new claim listing was provided, no claims were amended. The request for consideration does not place the application in condition for allowance because Applicant's argument that the limitation of the average diameter of greater than about 0.1 micrometer would be considered as lying within the disclosed range of less than or equal to about 2 microns by one of ordinary skill in the art. However, the argument fails to show Applicant had clear possession and/or support for the new range endpoint. As such, the limitation is still considered to be new matter.

Regarding the rejection to claims 16-23, 26-31, 33-40 and 43-52 in view of the article of Padture, Applicant argues that Padture is silent to the recited splat size and in contrast recites the absence of horizontal, strength-degrading "spats" boundaries/cracks (emphasis added). Applicant further disagrees with the Examiner's contention that the polycrystalline particle referred to in Padture is a splat that has a size within the claimed range. Applicant states the Examiner is confused regarding the difference between a splat and grain. During the interview with Michelle Henderson and Dr. Maurice Gell on 7-18-07, the Examiner asked how the solution-precursor plasma spray process of Padture would form a polycrystalline particle whereas the solution-precursor plasma spray process of the present invention forms splats. Dr. Gell stated that the splats were in fact formed, but were not able to be identified with the processing method used as described by Padture. Dr. Gell further stated that the particle is what remained and could be identified using the scanning electron microscope.

In light of Dr. Gell's admission, the claims would be anticipated by the Padture article since the splats were formed, but presumably not identified using the processing technique in the reference. Regarding a suggestion that the recited splats would be patentable since they are not described by Padture, something which is old does not become patentable upon the discovery of a new property (see MPEP 2112).

Applicant also disagrees with the Examiner's argument that Dr. Gell's statements in the Declaration are not commensurate with the claims. Applicant states that since a columnar-grain structure is characteristic of a splat and the claims are specifically limited to a particular splat size, it should not be necessary to amend the claims to include a columnar-grain structure before the Examiner will take Dr. Gell's Declaration into consideration. As was recited previously, the claims do not recite any columnar-grain structure, as such the disclosure by Dr. Gell that such a structure is formed is not commensurate in scope with the claims. Furthermore, in light of the disclosure during the interview on 7-18-07, it is not clear that Padture would not also have a columnar-grain structure.

Regarding the rejection to claims 59-60 over Padture in further view of Chow, Applicant's arguments are directed to whether Chow would read on the claimed splat size. However, Chow is relied upon as a teaching that it is known to subject coatings to post deposition techniques which allow for tailoring and adjustments of the coating properties including the porosity. As such, Applicant's arguments that Chow does not teach the claimed splat size are not persuasive.